RECENT CASE NOTES

CONSTITUTIONAL LAW—CIVIL SERVICE APPOINTMENTS—VALIDITY OF STATUTE PREFERRING VETERANS.—The municipal Civil Service Commission of New York City certified three names to the Police Commissioner for promotion, giving preference to veterans of the Great War, in accordance with a New York Statute (Laws, 1920, ch. 282) which provided that such veterans should, in civil service appointments and promotions, be preferred above others of the same grade on the lists of those who had passed the civil service examinations. The petitioners contended that the statute was unconstitutional and that the three highest names on the examination list should be certified for promotion. *Held,* that the statute was unconstitutional. *Matter of Barthelmess v. Cukor* (1921) 231 N. Y. 435, 132 N. E. 140.

Under a state constitution providing that the legislature shall not grant to any class of citizens privileges or immunities which, upon the same terms, shall not apply to all citizens, a veteran preferment statute has been held constitutional on the ground that the phrase "privileges and immunities" means only such as belong to every citizen, and does not include the privilege of holding office. *Shaw v. City Council of Marshalltown* (1905) 131 Iowa, 128, 104 N. W. 1121, construing Iowa Acts, 1904, ch. 9, sec. 1. Where a state constitution provided that the legislature might make "wholesome and reasonable" laws to govern public employments, a statute preferring veterans was considered valid. *Opinion of the Justices* (1896) 166 Mass. 589, 44 N. E. 625, construing Mass. Sts. 1896, ch. 517, sec. 6. At least one court has circumvented a similar statute by holding that it is not to be invoked by any veteran unless he can show that he is the *only* veteran qualified for preferment under its terms. *Allison v. Board of Education* (1899) 125 Calif. 72, 57 Pac. 673, construing Calif. Sts. 1891, ch. 212. In the instant case, the unusual wording of the New York Constitution to the effect that promotions should be made as far as practicable on the basis of competitive examination is held to preclude any unreasonable statutory preferment of one class over all other classes of candidates irrespective of any consideration of their relative fitness for office or their comparative standing on the lists of those successfully passing the examinations.

CONSTITUTIONAL LAW—EMERGENCY CLAUSES IN LEGISLATION—LEGISLATIVE DECLARATION NOT CONCLUSIVE ON COURTS.—Mandamus proceedings were instituted to compel the Secretary of State of Missouri to file referendum petitions against four bills passed by the Legislature abolishing certain county offices. The Secretary of State refused to file these petitions because each bill contained the words "This enactment is hereby declared necessary for the immediate preservation of the public peace, health, or safety." Article 4, section 57 of the Constitution of Missouri provides that a referendum "May be ordered except as to laws necessary for the immediate preservation of the public peace, health, or safety." *Held,* (two judges *dissenting*) that a statutory statement of purpose does not foreclose a judicial determination of the real character of a law. *State v. Becker* (1921, Mo.) 233 S. W. 641.

As a general rule, the existence of a public necessity is a matter for the exclusive determination of the legislature and not within the province of the courts. 1 Willoughby, *Constitution* (1910) 19; *Scott v. Frazer* (1919, S. E. D. N. D.) 258 Fed. 669; *Miller v. Fitchburg* (1901) 180 Mass. 32, 61 N. E. 277. Citing a South Dakota decision as authority, several cases have held that the judgment of a legislature in determining whether a measure is necessary for the preservation of the public peace, health, or safety, is not subject to judicial review. *State v. Bacon* (1901) 14 S. D. 394, 85 N. W. 605; *Kadderly v. Portland* (1903) 44 Or. 118,